



CITY OF MEMPHIS, TN

A C Wharton, Jr., Mayor

REQUEST FOR PROPOSAL

BANKING SERVICES

RFP #3027

November 2010

Finance Division

125 N. Main Street

Room 368

Memphis, TN 38103

**CITY OF MEMPHIS, TN
REQUEST FOR PROPOSAL
BANKING SERVICES**

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**CITY OF MEMPHIS, TN
REQUEST FOR PROPOSAL
BANKING SERVICES**

I. INTRODUCTION

The City of Memphis, TN (City) is currently accepting proposals from qualified financial institutions to provide comprehensive banking services as described in this Request for Proposal (RFP). The City shall select a financial institution to provide comprehensive banking services after issuing an RFP and evaluating the adequacy of capital or net worth of the financial institutions as well as pricing for individual services. The City will enter into a contract with the selected financial institution. The contract for banking services will be renewable on an annual basis for up to four years. Thereafter, another selection process will be implemented. The selected financial institution (Bank) shall send updated financial information to the City on a quarterly basis.

The City utilizes depository services for its internal and external customers. The City of Memphis Treasury Department (City Treasurer) utilizes lockbox services. The City actively manages its idle cash in-house. The City will award to a financial institution a contract for banking services on the basis of selection criteria as described in this RFP.

II. COLLATERAL FOR DEPOSITS

Collateralization is required on all deposits of City funds. The selected Bank shall provide collateral on all deposits of City funds (see Exhibit A). All funds belonging to the City which remain on deposit at a bank in excess of any amounts insured by the Federal Deposit Insurance Corporation (FDIC) must be fully collateralized.

III. RFP PROCESS

Submission of Proposals

The RFP is available online at www.cityofmemphis.org which is the City's website. A notice of Intent to Bid form, RFP Questionnaire, and Pricing Analysis is included with this RFP for your convenience in providing the requested information. Information presented should be concise yet complete. Please submit one copy of the Notice of Intent to Bid form and seven hard copies of both the RFP Questionnaire and your firm's proposal. Supporting schedules can be included to help answer questions in the RFP Questionnaire. Also, submit seven copies of all other hard copy documentation your firm provides in reply to this RFP.

Submission Deadline

Proposals must be received prior to 2:00 p.m. on December 3, 2010. Any proposal received after the submission deadline will not be considered.

Questions about the RFP

Questions about the RFP must be submitted in writing to the principal contact, **Sam Johnson, at e-mail address (Sam.Johnson@memphistn.gov)**. Questions and the answers to questions will be made available on the City's website. Please refer to the RFP schedule for additional information.

Duration of Offer

All proposals submitted in response to the RFP must state the period for which the proposals are irrevocable. The period of irrevocability shall be for at least 120 days after the RFP due date.

RFP Schedule

The following schedule pertains to the RFP. There are two main deadlines in the RFP schedule: the Notice of Intent to Bid deadline and the Proposals/RFP Questionnaire deadline. **The deadlines for the Notice of Intent to Bid and Proposals/RFP Questionnaire are November 12, 2010 and December 3, 2010 respectively.**

<u>Description:</u>	<u>Date:</u>
RFP Released	November 4, 2010
Deadline for Notice of Intent to Bid	November 12, 2010
Deadline for Questions about the RFP	November 19, 2010
Proposals Due/RFP Questionnaire Deadline	December 3, 2010
Interviews-week of	December 6, 2010
Notification of Successful Bid	December 15, 2010

Interviews

The City will interview each firm that submits a proposal. The target date for interviews is the week of December 6, 2010. The interview will allow each firm an opportunity to make a formal presentation or demonstration as to why it should provide banking services to the City.

Award of Contract

The Bank to which the City awards its contract for banking services shall be required to enter into a written contract with the City. The contract shall be in a form approved by the City's legal counsel. The City reserves the right to negotiate the terms and conditions of the contract. The City reserves the right to award this contract to the Bank that best meets the requirements of the RFP and not necessarily to the lowest bidder. The City furthermore reserves the right to reject any or all proposals prior to the execution of the contract with no penalty to the City. This RFP and the proposal, or any part thereof, may be incorporated into and made a part of the final contract.

Term of Contract

The contract will be renewable on an annual basis for up to four years by mutual consent of both parties. Either party may revoke the contract at any time with ninety days written notice to the other party. Without notice of termination or renewal, the contract will be in effect on a month-to-month basis until a new contract is signed.

Insurance Requirement

The Company shall not commence any work under this contract until it has obtained and caused its subcontractors to procure and keep in force all insurance required. The Company shall furnish the Risk Manager a Certificate of Insurance and/or policies attested by a duly authorized representative of the insurance carrier evidencing that the insurance required hereunder is in effect. All insurance companies must be acceptable to the City of Memphis and licensed in the state of Tennessee.

If any of the Insurance Requirements are non-renewed at the expiration dates, payment to the company may be withheld until those requirements have been met, or at the option of the City. The City may pay the renewal premiums and withhold such payments from any monies due the Company.

The Company shall indemnify, defend, save and hold harmless the City, its officers, employees, and agents, from and against any and all claims, demands, suits, actions, penalties, damages, settlements, costs, expenses, or other liabilities of any kind and character arising out of or in connection with the breach of this Agreement by Company, its employees, subcontractors, or agents, or any negligent act or omission of Company, its employees, subcontractors, or agents, which occurs pursuant to the performance of this Agreement, and this indemnification shall survive the expiration or earlier termination of this Agreement. The provisions of this paragraph shall not apply to any loss or damage caused solely by the acts, errors, or omissions of the City, its officers, employees and agents.

Each certificate or policy shall require and state in writing the following clauses:

“Thirty (30) days prior to cancellation or material change in the policy, notice thereof shall be given to the City of Memphis Risk Manager” by registered mail, return receipt requested to the following address.

City of Memphis
Attn: Risk Management
2714 Union Extended, Suite 200
Memphis, TN 38112

The City of Memphis, its officials, agents, employees and representatives shall be named as additional insured on all liability policies except the Error and Omission and Workers’ Compensation Policy. The additional insured endorsements shall be attached to the Certificate of Insurance.

Workers Compensation:

The Company shall maintain in force Workers’ Compensation coverage in accordance with the Statutory Requirements and Limits of the State of Tennessee and shall require all subcontractors to do likewise.

Employer’s Liability	\$100,000	Each Accident
	\$500,000	Disease – Policy Limit
	\$100,000	Disease – Each Employee

Automobile Liability:

Covering owned, hired and non-owned coverage with LIMITS OF:

\$1,000,000 Each Occurrence – Combined Single Limits

Fidelity Bond / Employee Dishonesty:

\$10,000,000 Each Occurrence/Aggregate

Commercial General Liability:

Comprehensive General Liability Insurance, including Premises and Operations, Contractual Liability, Independent Contractor’s Liability, and Broad Form Property Damage Liability coverage.

\$1,000,000	General Aggregate
\$1,000,000	Products – Completed Operations
\$1,000,000	Personal and Advertising Injury
\$1,000,000	Each Occurrence (Bodily Injury and Property Damage)

\$ 50,000	Fire Damage any one fire
\$ 5,000	Medical Expense any one person

Errors and Omission Liability:

The Company shall maintain such coverage for at least three (3) years from the termination or expiration of this agreement.

\$10,000,000 Each Occurrence/Aggregate

Property Insurance:

The Company shall be responsible for maintaining any and all property insurance including electronic data processing on their own equipment and shall require all sub-contractors to do likewise. The Company shall require all sub-contractors to carry insurance as outlined above, in case they are not protected by the policies carried by the Company.

The Company is required to provide copies of the insurance policies upon request.

Site Visit

City representatives might request to tour certain banking operational areas prior to selection of a Bank to provide the services being requested in this RFP. A likely banking operational area for such a site visit is lockbox processing.

IV. MINIMUM BANKING SERVICES REQUIRED

- A. Deposits
- B. Lockbox
- C. Controlled Disbursement
- D. Wire Transfers
- E. Payroll
- F. Accounts and Account Maintenance
- G. Account Reconciliation Services
- H. Information Reporting
- I. Online Banking for Businesses/
Municipalities
- J. Check Clearing
- K. Automated Clearing House (ACH)
- L. Account Analysis
- M. Check Imaging (CD-ROM)
- N. Positive Pay

Deposits

1. Deposits are made almost daily by the City Treasurer's office and by other City departments. The Bank shall furnish deposit tickets and master keyed night deposit bags to the City. The appropriate deposit slips provided by the Bank will accompany each deposit.
2. Deposits will consist of currency, coin, or checks. Currency will be bundled and wrapped (with the exception of parking meter coin collection). Parking meter coin collections will be bagged in standard bags, sealed and tagged for counting by the Bank, and deposited by the Bank.
3. The City deposits an average of approximately 3,000 checks per month to be credited to the proper accounts.
4. The Bank shall also be able to process MasterCard/Visa payments for any City services as needed.
5. The Bank shall supply bank deposit slips and other banking supplies, and cash handling equipment as needed by the City.
6. The Bank must provide an availability schedule for funds deposited via cash deposit, wire transfer, checks, and ACH credit.

Lockbox

1. The City Treasurer's office will utilize the Bank's lockbox services.
2. Property tax payments from city taxpayers will be mailed directly to the Bank by using the Bank's remittance address for lockbox payments on City tax bills.
3. Lockbox deposits will be input online daily as applicable by the Bank for verification by the City.
4. The Bank must deposit funds at least once a day as applicable and provide at least next day availability on all items deposited.
5. All items must be deposited on the same day they are received.

Controlled Disbursement

The Bank must be able to provide controlled disbursement services as part of a zero balance account (ZBA) structure.

Wire Transfers

1. The City requires online outgoing Fed wire transfers and confirmations to be provided. The City will input repetitive and non-repetitive wires (with same day or future date capability) and execute internal bi-level security for approval of wires sent to the Bank. Wire transfers ordered by the City and not received by the destination party will be traced from origin to destination to ascertain the party responsible for delaying the transfer. If necessary, adjustments will be made for

- any lost interest or charges resulting from a “fail” to consummate an investment transaction.
2. The Bank will enter into a separate Funds Transfer Agreement with the City. This agreement will be included as part of the Depository Contract

Payroll Services

1. The Bank must have the ability to process direct deposit for active and retired City employees.
2. The Bank must have the ability to process electronic file transmission of direct deposit payroll. Electronic file transmission occurs bi-weekly for active City employees and twice a month for retired City employees.
3. The Bank must have the ability to timely process ACH recalls pertaining to direct deposit.

Accounts and Account Maintenance

1. The City maintains twenty (20) active bank accounts. These include a concentration account, a zero-balance account, stand-alone accounts, and controlled disbursement accounts. The controlled disbursement accounts are funded from the concentration account and by the retirement funding account. Balances in the controlled disbursement accounts will be transferred daily through the zero-balance account, and funded from the appropriate account, concentration or retirement funding, to affect a zero balance in these accounts. All bank accounts of the City are included in this RFP.
2. Transfers between accounts will be charged to the City only as transfers and not also as items deposited and checks paid.
3. The Bank agrees to credit accounts for all checks in accordance with the Bank’s availability schedule. The Bank agrees to notify the City in writing, of any changes to the schedule.
4. Bank encoding errors are to be corrected within 72 hours after notification by the City at no cost to the City. An account analysis adjustment will be made for any bank error with a copy going to the City’s Office of Investment Management.

Account Reconciliation Services

1. The Bank will provide reconciliation service for all accounts specified in the RFP. Reconciliation services include the following minimum requirements:
 - a.) The Bank will provide the City, on a monthly basis, an electronic file of all checks paid by the Bank sorted by check number, date, and amount paid. This file will contain a full reconciliation for the City’s healthcare claims and on-the-job injury accounts. Partial reconciliation files will be provided for the City’s

- payables account and for all monthly deposits. A partial reconciliation file shall also be provided bi-weekly for the City's general payroll and bi-monthly for the City's retirement payroll accounts.
- b.) All cancelled checks (all accounts) are to be stored on one (1) CD-ROM, sorted in check number order and delivered to the City on a monthly basis.
 - c.) The Bank must have the ability to provide Positive Pay services. The Bank will be provided (via online transmission) a listing of all checks issued by the City each day. The Bank will notify the City within 24 hours of any "suspect" items.
 - d.) All other items will be delivered to the City such as debit and credit memos, deposit tickets, etc. in a timely manner.

Information Reporting Requirements

1. The Bank will provide daily balance reports online to the City by account, in summary and by transaction each morning as early as 7:00 a.m. for the prior day. The City monitors twenty (20) active accounts. In addition, intraday reports will be available online by account, for all transactions, wires, safekeeping deposits, transfers, and in summary form.
2. Provide automated balance reporting services for all City accounts. Available information should include closing ledger, closing collected, opening ledger, opening collected float, ACH credit detail, ACH debit detail and previous day debit and credit detail.
3. Provide access to information on cleared checks and automated stop payments facilities.
4. Accept and send ACH transactions and provide detailed written notification of ACH deposits within 24 hours.
5. Provide an overnight sweep facility for excess cash balances.
6. Maintain separate custody accounts for securities pledged as collateral on City deposits by other financial institutions.
7. Calculate the market value of all collateral securities pledged on City accounts and report this information, along with a detailed report listing the accounts and deposit balances so secured, to the City each month where applicable. This report must verify the adequacy of collateral as specified in City's Deposit Collateralization Requirements in Exhibit A.
8. Provide monthly account activity statements and reports for all direct deposit accounts. The statement cutoff should be the last day of the month. A listing of all account activity must be received no later than the 5th business day of the following month.

V. Selection Criteria

1. Proposals submitted in reply to the RFP will be evaluated by a City selection committee. The selection committee is comprised mainly of personnel in the City's finance division.

2. Proposals will be evaluated based upon the following criteria:

- A. Comprehensive ability to provide the services described in the RFP (10%)
- B. Experience of providing the services described in the RFP (10%)
- C. Pricing for services (10%)
- D. Use of technology/internet to deliver services (5%)
- E. Financial strength of the organization (10%)
- F. Disaster recovery plan (5%)
- G. Lockbox capability (10%)
- H. Wire transfer capability (10%)
- I. Collateral for deposits (10%)
- J. Information reporting (10%)
- K. Account reconciliation services (10%)

Each criterion is evenly weighted (10%) except “D” and “F” above which are weighted half as much (5%).

VI. Pricing and Compensating Balances

1. The proposal will be on a variable cost basis. Under the variable cost method, actual monthly services as provided will be counted and the volume of the transactions will be computed to determine the appropriate compensating balance required to support the account activity. Exhibit B is to be used to compile and compute the account activity and the calculation of compensating balances. Exhibit B is also used to estimate the annual volume of transactions and the resulting fees there from.
2. The City will elect to use the monthly activity service charges for direct payment or compensating balances, whichever it decides is most appropriate. There will be a one month time lag in implementing either method of payment to allow the City an opportunity to review the services charges, earnings credit allowance, and required reserves during the calculation month before they are implemented.
3. The per item charges shall remain fixed over the life of the initial contract, unless an adjustment is allowed. An allowable adjustment would be changes in the monthly volume of transactions or changes in the earnings credit allowance (the formula should remain constant). Increases or decreases should be netted against the initial per item charge. Such adjustments will be allowed as determined by the City.

VII. INTENT TO BID FORM

The following is a suggested format on your firm's letterhead:

Notice of Intent to Bid

Date

Sam Johnson
Investment Manager
City of Memphis
125 N. Main Street, Room 368
Memphis, TN 38103

Dear Sam:

This letter is to confirm that Name of Financial Institution has received the City of Memphis' Request for Proposal (RFP) for Banking Services. The authorized representative of Name of Financial Institution whose signature is affixed below has read this RFP and will submit a proposal.

Name of Financial Institution hereby submits this notice of intent to bid for the City of Memphis' banking services contract.

Sincerely,

Signature of Authorized Representative

Name of Authorized Representative

Title

Date

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VIII. RFP QUESTIONNAIRE

Name of Financial Institution

A. The Organization

1. Describe the organization, its major lines of business, changes in ownership, and any major organizational changes pending.
2. Indicate the experience the Bank has in providing services similar to those in the RFP.
3. Include a representative client list of governmental and/or corporate customers for whom the Bank currently or has provided services similar to those in the RFP.
4. Include three years of the Bank's audited financial statements.
5. Include three years of the Bank's "Community Reinvestment Act Performance Evaluation."
- 6.
7. Indicate the Bank's credit rating history for the last five years as indicated by at least two nationally recognized rating agencies.
8. Describe the Bank's overall disaster recovery plan as applicable to the services described in the RFP.

B. Service Personnel

1. Provide basic biographical information on key bank officers that will be directly involved in the management of the City's account; primary contact persons name, title, address, phone and fax number, email address, and experience these officers have in working with municipal customers.
2. Provide an organizational chart for the personnel who will be associated with the City's account, including the roles of each person, and illustrating the relationship among the personnel.

C. Banking Locations

1. Provide the address of the office location that will service the City's account.
2. List the address of all branch offices in Shelby County. A map showing the locations is suitable but also indicate the number of branches which are full service branches, in-store branches, etc.

D. Banking Services (General)

1. Describe the availability of online services the Bank offers as applicable to the services in the RFP.
2. Describe the Bank's ability to provide automated banking services and to what extent, if any, of the services listed on the official proposal forms are automated. Please be specific about the level of automation and also provide information on the daily volume processed by the Bank for at least three of your largest clients, where applicable.
3. Provide a list of the Bank's holidays.
4. Does the Bank have any changes planned for service methodology as it applies to services in the RFP? If yes, please explain.
5. If selected, can the Bank provide a two year written price guarantee for services listed on Exhibit B (attached)? If no, please explain.

E. Depository Services

1. Attach a copy of the Bank's availability schedule that would apply to deposits into City accounts. Include the Bank's policy on receiving same day credit for deposits. Be specific as to the crediting cut-off time of checks deposited with the Bank's system, other local banks, regional banks, etc.
2. What is the Bank's procedure for the processing of returned deposit items?
3. Describe the Bank's overnight investment program for deposits it receives.
4. Provide the average monthly interest rate on the Bank's overnight sweep program for each month from January 1, 2008 through June 30, 2010.
5. Describe the Bank's ability to accept for deposit property tax payments from walk in taxpayers of the City. Does the Bank have the ability for City taxpayers to make property tax payments in the Bank's branches?
6. When is an item considered "received" for purposes of determining availability (e.g. in bank, at central processing facility, initial processing)?
7. Describe the Bank's ability to meet the City's collateral requirements for funds on deposit.
8. Does the Bank offer remote deposit services (i.e. electronic depositing of checks via scanned images of checks)?
9. Describe the Bank's remote deposit services system including applicable deadlines for same day credit of deposits.

F. Compensating Balance

1. Describe the Bank's method (i.e. formula) for calculating compensating balance requirements as payment for banking services.

2. What is the Bank's policy for treating unused earnings credits?
3. What was the Bank's earnings credit allowance for deposits for each month from January 1, 2008 through June 30, 2010?

G. Controlled Disbursement Services

1. Describe the Bank's controlled disbursement process as part of a zero balance account (ZBA) system.
2. What are the Bank's published first and second presentment times?
3. Do the Bank's first and second presentments combined represent all checks that will clear the respective account on day of the presentments?
4. By what time does the Bank provide notification of exception items and what time must the customer inform the Bank of how to handle?
5. How does the Bank notify customer of exception items?

H. Other Services

1. For what intervals does the Bank offer stop payments (six months, twelve months, twenty-four months, etc.)? The Bank must provide an online stop payment service through an online system. System should be capable of confirming stop payment in a timely manner after the stop payment has been initiated.
2. Does the Bank offer online inquiry for cleared checks, deposits, withdrawals, and the ability to view supporting images?

I. Lockbox Services

1. What is the Bank's availability schedule for lockbox deposits? Provide a copy of this schedule.
2. Describe the Bank's retail and wholesale lockbox service to include:
 - a. Processing capability for equipment used to process lockbox payments.
 - b. Mail pick-up schedules.
 - c. Processing schedule.
 - d. Frequency of deposit for lockbox payments.
 - e. Use of technology.
 - f. Lockbox data transmission.
3. Describe the Bank's quality control practices for lockbox.

J. Wire transfers

1. What methods of wire transfer does the Bank have available to customers (i.e. voice initiated, online, dial-in, etc.)?
2. What are the applicable cut-off times and deadlines for the Bank's wire transfer system(s)?
3. Does the Bank have the ability to establish repetitive wires?
4. Does the Bank have the ability to establish future dated wires?
5. Describe the policies, procedures or methods the Bank has implemented to make wire transfer transactions secure.

K. ACH Services

1. What, if any, is the Bank's affiliation with the National Automated Clearing House Association (NACHA)?
3. What is the guaranteed settlement time for ACH transactions processed through the Bank?
4. What software does the Bank have available for its customers to submit ACH files or initiate ACH transactions?
5. What policies, procedures or methods has the Bank implemented to make ACH transactions secure?

IX. EXHIBITS

Terms and Conditions

RFP TERMS

REQUEST FOR PROPOSAL TERMS

The City of Memphis seeks proposals from firms who have the expertise to provide Banking Services in accordance with this RFP document. This is a Request for Proposal that may be modified by the City in the selection process.

THE CITY OF MEMPHIS ENCOURAGES THE PARTICIPATION OF SMALL AND MINORITY BUSINESSES IN THE PURCHASING PROCESS.

The City of Memphis is an Equal Opportunity Employer and does not discriminate on the basis of race, color, national origin, sex, religion, age or handicap status in employment or in the provision of services.

This procurement may be subject to the requirements of Ordinance No. 5114 which establishes a local preference for local businesses located within the City of Memphis. A copy of your current Memphis and Shelby County Tennessee Business Tax Receipt must accompany the proposal for consideration of this ordinance.

The contract may be subject to the requirements of Ordinance No. 5185, as amended, which establishes a minimum wage for employees of businesses receiving a service or service-related contract from the City of Memphis. The Living Wage ordinance and any amendments thereto, can be accessed on the City's website (www.memphistn.gov). Once on the City's homepage, click on the "Business" link, and then click on the "Doing Business with the City" link. A link to the ordinance will be accessible on the top right side under the section "Links".

Any protest of award must be filed in writing with the Purchasing Agent within five (5) calendar days of the intent to award announcement at the following address: City of Memphis Purchasing Agent; 125 North Main, Room 354; Memphis, Tennessee 38103. Notice will be posted on the City's website and outside Council Chambers, located on the lobby floor of City Hall. The intent to award notification shall be deemed publicly announced on the date specified on the notice.

Only proposals submitted on the provided form(s) with no changes, additions or deletions to the terms and conditions will be considered. Proposals containing terms and conditions other than those contained herein may be considered nonconforming.

No objections with regard to the application, meaning, or interpretation of the specifications will be considered after the opening of the subject proposals. If there are questions or concerns regarding any part of plans, terms, specifications or other proposed documents, a written request for interpretation thereof may be submitted to the City Purchasing Agent prior to the deadline date. The organization submitting the request shall be responsible for the prompt delivery of the request. Any interpretation in response to the written request will be made only by addendum duly issued, and a copy of such addendum will be mailed or delivered to each organization receiving a set of such documents and/or posted on the City's website. The City of Memphis will not be responsible for any other explanation or interpretation of the proposed documents. By submission of its proposal, a vendor shall be deemed to have understood fully the contents and meaning of the RFP.

All proposals must be signed by an authorized representative of your organization. Unsigned proposals will be considered nonconforming.

Any contract resulting from the proposals received in response to this solicitation shall be construed in accordance with and governed by the laws of the State of Tennessee. All actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation and enforcement of this Agreement shall be instituted and litigated in the courts of the State of Tennessee, located in Shelby County, Tennessee without regard to conflicts of laws principles.

By order of the Mayor of the City of Memphis, Tennessee.

A C WHARTON, JR., MAYOR

Jerome Smith, City Purchasing Agent

Proprietary and Confidential

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INSTRUCTIONS TO PROPOSERS

Proposers shall submit their signed proposal in a sealed envelope INDICATING ON THE OUTSIDE: THE COMPANY NAME and THE REQUEST FOR PROPOSAL NUMBER.

Proposers must comply with all applicable licensing requirements. Pursuant to the City of Memphis Charter, Article 71, Section 777 et seq., it is unlawful to operate a business within the limits of the city of Memphis without possessing a Memphis and Shelby County business license, excepting non-profit organizations that qualify as tax exempt under Sec. 501(c)(3) of the Internal Revenue Code. Upon award notification and prior to the City issuing a properly executed purchase order or entering into a contract with the vendor, the successful vendor, whose principal business address is located within the limits of the city of Memphis, will be required to submit, along with the required insurance and other required documentation, a copy of (1) the tax-exempt ruling or determination letter from the Internal Revenue Services; or (2) its current Memphis and Shelby County Business Tax Receipt/License.

Issuance of this RFP does not obligate the City to contract, in whole or in part, for services specified herein. The City of Memphis reserves the right to cancel this solicitation, in whole or in part, or to reject, in whole or in part, any and all proposals. Cancellation of this RFP or any subsequent award will be posted on the City's website: www.memphistn.gov under the section titled "Government News."

Any firm receiving a mailed solicitation on the above subject and not bidding will be electronically removed from the City's mailing list used for the above-referenced subject after 3 consecutive non-responses or no bids.

For additional information concerning this solicitation, please contact: Sam Johnson at Sam.Johnson@memphistn.gov or via facsimile at n/a.

This solicitation shall be in accordance with the City of Memphis Purchasing Policies and Procedures, which may be amended from time to time.

All materials submitted pursuant to this RFP shall become the property of the City of Memphis.

To the extent permitted by law, all proposals submitted in response to this RFP shall be kept confidential until the proposals have been evaluated and the intent to award is announced. Until the intent to award is announced, no information regarding any proposal will be released to anyone, except members of the Evaluation Committee who are responsible for evaluating the proposals and other appropriate City staff. All information provided by the Vendor in response to this RFP will be considered by the Evaluation Committee in evaluating the proposal and making an award recommendation to the City.

The Mayor of the City of Memphis is the only individual who can legally sign contracts on behalf of the City. Costs chargeable to the proposed contract shall not be incurred before receipt of a fully executed contract.

Proprietary and Confidential

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BANKING SERVICES**

Exhibit A

Eligible Collateral

Eligible collateral means:

- (1) Bonds of the United States or any of its agencies;
- (2) Obligations guaranteed by the United States or any of its agencies, the payments of which are fully guaranteed both as to principal and interest by the United States;
- (3) Obligations guaranteed by the Tennessee industrial development authority not to exceed the amount of the guarantee;
- (4) Bonds of the state of Tennessee, including any revenue bond issued by any agency of the state specifically including institutions under the control of the state board of regents, the board of trustees of the University of Tennessee and bond issued in the name of the state school board authority;
- (5) Bonds of any utility district, county or municipal corporation of the state of Tennessee, including bonds payable from revenues (expressly excluding bonds of any road, levee or drainage district) upon which such bonds there has been no default in payment of interest more than thirty (30) days upon any one (1) installment of interest, for the five (5) years next preceding the deposit of such bonds;
- (6) Loans to students guaranteed one hundred percent (100%) by the Tennessee Student Assistance Corporation during the dormant period of such loan;
- (7) Bonds issued under the provisions of title 7, chapters 37 and 53, or under title 48, chapter 101, part 3, that are rated "A" or higher by any nationally recognized rating service;
- (8) The State of Tennessee Collateral Pool;
- (9) Any other collateral security which is acceptable to the Secretary of the Treasury to secure the United States for deposits of public money in tax and/or loan accounts; provided, that such collateral shall not include state or municipal bonds from other states or from municipalities in other states.

**CITY OF MEMPHIS, TN
REQUEST FOR PROPOSAL
BANKING SERVICES**

Exhibit B

Pricing Analysis

(Financial Institution)

Date of Offer

	Estimated Annual Volume	Price Per Unit	Estimated Annual Cost
Bank Depository Services			
ACH			
ACH Originated Credit	291,812	\$0.00	\$0.00
Deposits			
Branch Deposited Coin-Currency	1,849	0.00	0.00
Deposit	34,601	0.00	0.00
Demand Deposit Acct. Maint.	104	0.00	0.00
Vault Dep Coin & Currency	17,912	0.00	0.00
Check Clearing			
Checks/Items Paid - Cont. Disb.	122,814	0.00	0.00
Check Image Capture	110,881	0.00	0.00
Check Image-CD-Rom	13	0.00	0.00
Check Paid-Positive Pay	10,652	0.00	0.00
Check Issued Items	125,836	0.00	0.00
Check Retention	109,157	0.00	0.00
Wire Transfer			
Funds TRNSF	387	0.00	0.00
Incoming Fedwire TRNSF	81	0.00	0.00
Local Clearinghouse	48,982	0.00	0.00
LB Info Deliv Auto Transmission	4	0.00	0.00
On Us Local	50,649	0.00	0.00
On-Us	2,377	0.00	0.00
Overdraft/ NSF Items	4	0.00	0.00
Other FED	72,245	0.00	0.00
Local Fed encoded	84,959	0.00	0.00
Local Fed	4,610	0.00	0.00
On-line Banking			
Online Banking	33	0.00	0.00
Web Stop Pay-24 Months	248	0.00	0.00
Web Stop Pay 6 Months	13	0.00	0.00
PPR Disb Recon RPT PD/Outstand	110,922	0.00	0.00
Positive Pay W/Recon	28,975	0.00	0.00
Lock-box			
RTL LB Machine Read ITM Matched	115,202	0.00	0.00
Retail LB Remit Unmatched Item	1,114	0.00	0.00
Retail Lockbox Correspondence	17,410	0.00	0.00
Retail Lockbox Images	254,937	0.00	0.00
Retail Lockbox CD-ROM	26	0.00	0.00
Retail LB Checks or Doc	19,062	0.00	0.00
Retail LB Exceptions	2,823	0.00	0.00
Retail LB Cash Payment Process	46	0.00	0.00
Wholesale LB Correspondence	30,466	0.00	0.00
Wholesale Lockbox Maintenance	33	0.00	0.00
Wholesale Lockbox REMIT Processing	17,976	0.00	0.00
Account Maintenance			
Zero Balance Account Maintenance	46	0.00	0.00
Estimated Total Annual Cost			\$0.00
Estimated Average Monthly Cost			\$0.00

Exhibit C

“Proposed Contract” SERVICE AGREEMENT

SERVICE AGREEMENT FOR

This Agreement is made and entered into as of _____ by and between _____, hereinafter called the "Contractor" and the City of Memphis, a municipal corporation of the State of Tennessee, hereinafter called the "City":

WITNESSETH

WHEREAS, the City has the need for _____; and

WHEREAS, the Contractor has the knowledge and expertise to provide such services; and

WHEREAS, the parties desire to enter into a contract setting forth the terms and conditions under which the Contractor shall provide said services.

NOW THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

SCOPE OF SERVICES. The Services to be provided in connection with this Agreement shall include, but not be limited to, those items listed in the Scope of Work, which is attached hereto and incorporated herein as Exhibit A (the "Services").

TERM. This Agreement shall not be binding upon the parties until it has been signed first by the Contractor and then by the authorized representatives of the City in accordance with applicable ordinances, laws and regulations.

The Initial Term of this Agreement shall commence beginning _____ and shall end on _____ ("Initial Term") subject to the availability of funds to finance the same and the successful operation of the program.

The City shall have the option to extend the Initial Term for _____ additional one-year periods (the "Option Periods"), subject to the appropriation of funds by the Memphis City Council. Unless the City gives the Contractor written notice of the City's intention not to exercise an option period at least _____ days prior to the expiration of the then current period, the option will be automatically exercised, and the applicable Option Period will commence immediately upon conclusion of the preceding Initial Term or Option Period, as applicable. The Initial Term and the exercised Option periods are collectively referred to hereinafter as the "Term."

PAYMENT TERMS AND CONDITIONS

INVOICES. The Contractor shall submit original invoices, or copies of original invoices certified as such by the Contractor, on the Contractor's letterhead and in form and substance acceptable by the City and with all necessary supporting documentation, to the City. The invoice shall describe the services, shall reflect any applicable terms of payment, and must show the contract number to which it relates. Unless the contract number is shown on the invoice, it may be returned to the Contractor. Invoices shall be submitted to: _____, _____, Memphis, TN _____, Attn: _____

COMPENSATION. Unless the City has good faith and reasonable objections to the Contractor's invoice(s), the City shall compensate the Contractor, based on invoices submitted by the Contractor, the sum total not to exceed _____ (USD) (the "Fee") during the term of the Agreement, which shall include all reimbursable expenses.

The City shall use its best efforts to remit payment based on the Contractor's invoice within thirty (30) days after receipt of accurate invoice and approval by the City. The City is not obligated to pay, and may withhold from payment, any amounts the City has in dispute with the Contractor based on the Contractor's non-performance, unsatisfactory performance or negligent performance of any services hereunder.

PAYMENT DOES NOT IMPLY ACCEPTANCE OF WORK. The payment of an invoice shall not prejudice the City's right to object to or question any invoice or matter in relation thereto. Such payment by

the City shall neither be construed as acceptance of the work nor as final approval of any of the costs invoiced therein, and the City's payment shall not relieve the Contractor from its obligation to replace or correct any work that does not conform to this Agreement, even if the unsatisfactory character of such work may have been apparent or detected at the time such payment was made. Work, data or components that do not conform to the requirements of this Agreement shall be rejected by the City and replaced by the Contractor, without delay or additional cost to the City.

If the Contractor receives payment from the City for a service or reimbursement that is later disallowed or rejected by the City or another governmental entity on the basis of audit or monitoring, the Contractor shall promptly refund the disallowed amount to the City upon the City's request. At its option, the City may offset the amount disallowed from any payment due to the Contractor under this Agreement or any other agreement.

FINAL CONTRACT INVOICE. The Contractor shall submit to the City a final contract invoice within 45 calendar days from the termination date of the contract, for any services provided pursuant to this Agreement. The Contractor further acknowledges and agrees the City will not be responsible for any Contractor invoices, pertaining to this Agreement, submitted to the City after the final contract invoice. The Contractor shall close out its accounting records at the end of the Agreement period in such a manner that reimbursable expenditures and revenue collections are NOT carried forward.

INCORPORATION OF WHEREAS CLAUSES. The foregoing whereas clauses are hereby incorporated into this Agreement and made a part hereof.

REPORTS. Upon request, the Contractor shall prepare and submit reports of its activities, funded under this agreement, to the originating department of the City. The reports shall include an itemization of the use of the City's funds, inclusive of specific services delivered by the Contractor. Any such reports provided to the City shall be prepared with the understanding that the City may make such reports available to the public. The City shall have the right to withhold future disbursement of funds under this Agreement and any future Agreements until the requirements of this provision have been met.

ENTIRE AGREEMENT. This Agreement constitutes the full and final understanding of the parties with respect to the subject matter hereof and supersedes and replaces any and all prior or contemporaneous agreements or understandings, whether written or oral, express or implied, between the parties with respect to the subject matter of the Agreement.

STANDARD OF PERFORMANCE. All services by the Contractor shall be performed in compliance with the specified requirements, in a manner satisfactory to the City, and in accordance with the generally accepted business practices and procedures of the City and pursuant to the governing rules and regulations of the industry, based on the type of services performed hereunder.

HEADINGS. Titles and headings used herein are for the convenience of reference only and shall be disregarded completely in the interpretation and validity of this Agreement or any of its terms.

MODIFICATION AND AMENDMENT. Any changes, modifications or amendments to this Agreement shall not be considered agreed to or binding on the other party, unless such modification(s) have been agreed to in writing and approved by the appropriate City officials in accordance with applicable laws and regulations.

CONFIDENTIALITY. While performing work under this Agreement, the Contractor may gain access to proprietary and/or confidential information that, if disclosed to third parties, may be damaging to the City or its officials or employees. Such information shall include materials considered to be confidential information as a matter of law (e.g., personnel records), and shall also include (i) all materials in any form developed or created by the City related to funding and financial and business information; (ii) all information owned, possessed or used by the Contractor, which is communicated to, learned, developed or otherwise acquired by the Contractor in the performance of the Services for the City; (iii) the terms, conditions and pricing contained herein; and (iv) any other information that the Contractor has been advised by the City is confidential, privileged or proprietary. Confidential information, as used in this Agreement, shall not include (i) information in the Contractor's possession prior to disclosure by the City; (ii) information generally available to the public or that becomes available to the public through a source other than the City, or (iii) information that was rightfully obtained by the Contractor from a third party who is under no obligation of confidentiality to the City with respect to such information. The Contractor agrees that it will accept and hold confidential information obtained from the City in confidence at all times during and after termination of this Agreement. The Contractor shall neither use nor disclose or

communicate such information, except as provided in this Agreement or as required by law, without the prior written permission of the City.

The Contractor acknowledges and agrees that a breach by the Contractor of this section will cause the City irreparable injury and damage; therefore, the Contractor expressly agrees that the City shall be entitled to injunctive or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Agreement. The Contractor agrees that it will disclose confidential information only to those employees who have a right to know, and shall require its employees, agents, and subcontractors to comply with the requirements of this provision and the requirements of the provisions titled "Public Statements" and "Rights in Data."

PUBLIC STATEMENTS. The Contractor shall not make any announcement, release any information, or authorize or participate in any interview concerning this Agreement and the Services, without first obtaining written consent from the City. The Contractor shall require its employees, agents, and subcontractors to comply with the requirements of this provision. This provision shall survive the expiration or termination of this Agreement.

RIGHTS IN DATA. The Contractor agrees that all reports, studies, plans, models, drawings, specifications, and any other information or data of any type produced under this Agreement, whether or not the same is accepted or rejected by the City, shall remain the property of the City and shall not be published by the Contractor or any other party without the express prior written consent of the City. In implementing the foregoing, the Contractor hereby grants and assigns to the City all rights and claims of whatever nature, whether now or hereafter, arising in and to any and all of such reports, studies, plans, models, drawings, specifications, and other information or data and shall cooperate fully with the City in any steps the City may take to obtain copyrights, trademark or like protections with respect thereto. The signing of this Agreement shall constitute a complete transfer of ownership, intellectual property and copyright of all documents from the Contractor to the City upon the Contractor's delivery of such documents and/or information to the City or upon completion of the Project, whichever occurs first. The Contractor shall not construe such transfer as a grant for usage nor can the Contractor revoke it.

EMPLOYMENT OF CITY WORKERS. The Contractor shall not engage, on a full, part-time or any other basis during the term of this Agreement, any professional or technical personnel who are or have been at any time during the term of this Agreement in the employ of the City.

CONTRACTOR'S PERSONNEL. The Contractor certifies that it presently has adequate qualified personnel to perform all services required under this Agreement and that all work performed under this Agreement shall be supervised by the Contractor. The Contractor further certifies that all of its employees assigned to perform any work hereunder shall have such knowledge and experience as required to perform the duties assigned to them. Any employee of the Contractor who, in the opinion of the City, is incompetent, whose conduct becomes detrimental to the work, or whom the City deems to be unsatisfactory for any reason, shall immediately be removed from association with the services hereunder per the City's request. Upon such request, the Contractor shall use all reasonable efforts to promptly replace such employee(s) with substitute employee(s) having appropriate skills and training.

The Contractor shall be solely liable and responsible for providing to, or on behalf of, all persons performing work pursuant to this Agreement, all employee compensation and benefits. The City shall have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, health, welfare and disability benefits, Federal and local taxes, or other compensation, benefits or taxes for any personnel provided on behalf of the Contractor. In addition, the Contractor shall be solely liable and responsible for any and all workers' compensation benefits to any person as a result of injuries arising from or connected with any work performed by or on behalf of the Contractor pursuant to this Agreement.

INDEPENDENT CONTRACTORS. Nothing in this Agreement shall be deemed or construed to represent that the Contractor, or any of the Contractor's employees or agents, are the agents, representatives, or employees of the City. The Contractor acknowledges that it is an independent contractor over the details and means for performing the services hereunder. Anything in this Agreement which may appear to give the City the right to direct the Contractor as to the details of the performance of its obligations hereunder or to exercise a measure of control over the Contractor is solely for purposes of compliance with local, state and federal regulations and means the Contractor will follow the desires of the City only as to the intended results of the scope of this Agreement.

It is further expressly agreed and understood by the Contractor that neither it nor its employees or

agents shall hold itself out contrary to the terms of this paragraph, and the City shall not be liable for any representation, act or omission of the Contractor contrary to the provisions hereof..

TERMINATION

1. It shall be cause for the immediate termination of this Agreement if, after its execution, the City determines that either:

- a. the Contractor or any of its principals, partners or corporate officers, if a corporation, including the corporation itself, has plead nolo contendere, or has plead or been found guilty of a criminal violation, whether state or federal, involving, but not limited to, governmental sales or purchases, including but not limited to the rigging of bids, price fixing, misappropriation of government funds, or any other collusive and illegal activity pertaining to bidding and governmental contracting; or
- b. the Contractor subcontracted, assigned, delegated, or transferred its rights, obligations or interests, voluntarily or involuntarily, under this Agreement without the City's consent or approval; or
- c. the Contractor has filed bankruptcy, has been adjudicated bankrupt, become insolvent or made an assignment for the benefit of creditors, or a receiver, or similar officer is appointed to take charge of all or part of the Contractor's assets; or

2. The City may cancel/terminate this Agreement, in whole or in part, upon providing written notice to the Contractor of the City's intention to terminate the Agreement as a result of Contractor's failure to provide the services specified under this Agreement or in violation(s) of any of the terms herein, and the Contractor has failed to cure such breach within _____ business days of such notice. The City may reject the entire services and cancel this Agreement for any services rendered or to be rendered hereunder. In the event of any such rejection/termination, the City shall, at the City's option, have the right to obtain like services elsewhere or to take over the work and prosecute the same to completion, both at the Contractor's expense; and in such event, the City may take possession of and utilize in completing the work, such materials, appliances, etc. as may be on the site of the work and necessary therefore. The Contractor shall be liable to the City for any loss, damage, or additional cost incurred thereby, including but not limited to any difference between the cost for procuring such like services and the price specified herein, attorneys' fees and court costs.

3. Notwithstanding the foregoing or any section herein to the contrary, the contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Agreement by the Contractor, and the City may withhold any payments to the Contractor, for the purpose of setoff, until such time as the exact amount of damages due the City from the Contractor is determined.

4. The City may, in its sole discretion, suspend and/or terminate this Agreement for convenience upon giving _____ days prior written notice to the Contractor. In the event of such termination, the Contractor shall be entitled to receive just and equitable compensation, as determined by the City, for any satisfactory authorized work performed in accordance with the Agreement up to the termination date; but in no event shall the City be liable to the Contractor for expenses incurred after the termination date. All services completed by the Contractor prior to the Termination Date shall be documented and all tangible work documents shall be transferred to the City prior to payment for services rendered, and shall become the sole property of the City. Such termination by the City shall not be deemed a Breach of Contract by the City, and the Contractor shall not be compensated for any anticipatory profits, or other damages of any description, that have not been earned as of the date of termination.

5. The Contractor shall deliver to the City all hard copy and electronic files maintained on behalf of the City within thirty (30) days of termination of this Agreement. Upon reasonable request, the City reserves the right to obtain such information prior to the termination of this Agreement.

COMPENSATION FOR CORRECTIONS. No compensation shall be due or payable to the Contractor pursuant to this Agreement for any of the Contractor's services performed by the Contractor in connection with the City effecting corrections to the services, when such corrections are required as a direct result of negligence by the Contractor to properly fulfill any of its obligations herein.

CITY'S RIGHT TO WITHHOLD CERTAIN AMOUNTS AND MAKE APPLICATION

THEREOF. If evidence is produced before the final settlement of all or any balances that the Contractor has failed to pay laborers employed on his work or failed to pay for materials used therein, or if the City has reason to suspect the same, the City may withhold such balances and upon evidence satisfactory to the City as to the amount due for such labor and materials, the City, acting as the agent of the Contractor, may

settle and pay for the same and charge the amounts to the Contractor and deduct the same from the said balance or balances.

REMEDIES CUMULATIVE. All remedies available to the City provided herein are cumulative and shall be in addition to all other rights and remedies provided by law. The termination, expiration, or suspension of this Agreement shall not limit the City from pursuing other remedies available at law or in equity.

SUBCONTRACTING, ASSIGNMENT or TRANSFER. The Contractor shall not subcontract, assign, delegate or transfer all or part of its rights, responsibilities, or interest under this Agreement without the prior written consent of the City. Any purported assignment, transfer, or delegation in violation of this Section shall be voidable by the City. No subcontracting, assignment, delegation or transfer shall relieve the Contractor from performance of its duties hereunder; neither shall the City be responsible for the fulfillment of the Contractor's obligations to its transferors or subcontractors. Upon request of the City, the subcontracting, assigning, delegating or transferring party shall provide all documents evidencing the transfer.

If granted approval to subcontract, the Contractor shall not subcontract more than _____% of the work required hereunder. The computation for percentages will be based on monetary values.

CONFLICT OF INTEREST. Neither party shall engage in any conduct or activity in the performance of this Agreement that constitutes a conflict of interest under applicable federal, state or local laws, rules and regulations.

The Contractor covenants that it has no public or private interest, and shall not acquire, any interest, directly or indirectly, which would conflict in any manner with the performance required under this Agreement, and the Contractor covenants that no gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor, to any officer, official, agent or employee of the City, in an effort to secure the Agreement or favorable treatment with respect to any determinations concerning the performance of the Agreement. The Contractor warrants that no part of the total contract amount provided herein shall be paid directly or indirectly to any officer or employee of the City as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor or consultant to the Contractor in connection with any work contemplated or performed relative to this Agreement. For breach or violation of this provision, the City shall have the right to recover or withhold the full amount of such gratuities.

COVENANT AGAINST CONTINGENT FEES. The Contractor warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Contractor any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this provision, the City shall have the right to recover the full amount of such fee, commission, percentage, brokerage fee, gift, or other consideration.

GENERAL COMPLIANCE WITH LAWS. The Contractor certifies that it is qualified or will take steps necessary to qualify to do business in the State of Tennessee and that it shall take such action as, from time to time, may be necessary to remain so qualified and shall obtain, at its own expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Agreement. Such permits and licenses shall be made available to the City, upon request.

The Contractor is assumed to be familiar with and shall comply with all applicable federal, state, and local laws, ordinances, and regulations in performing any of its obligations under this Agreement, including but not limited to the City of Memphis Living Wage Ordinance, the Fair Labor Standards Act, Occupational Safety and Health Administration (OSHA), and the Americans with Disabilities Act (ADA). The Contractor shall promptly notify the City of any conflict discovered between this Agreement and any applicable laws, rules, regulations, and/or permits and licenses, and await resolution of the conflict.

NON-DISCRIMINATION. The Contractor hereby agrees to comply with Title VI and Title VII of the Civil Rights Act of 1964 and all other federal, state or local laws prohibiting discrimination, which provide in whole or in part, that no person shall be excluded from participation in, or be denied benefits of, or be otherwise subjected to discrimination in the performance of this Agreement or in the Contractor's employment practices on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, State or statutory law. The Contractor shall, upon

request, show proof of such nondiscrimination, and shall post in conspicuous places available to all employees and applicants notices of nondiscrimination. In the event the Contractor fails to comply with the City's non-discrimination policy and any and all other laws prohibiting discrimination, this Agreement may be canceled, terminated or suspended in whole or in part by the City.

The City reserves the right to investigate any claims of illegal discrimination by the Contractor and in the event a finding of discrimination is made and upon written notification thereof, the Contractor shall take all necessary steps to cure and rectify such action to the reasonable satisfaction of the City. The Contractor's failure or refusal to do so shall be cause for termination of this Agreement in accordance with the terms of this Agreement.

SEVERABILITY. If any terms or provisions of this Agreement are held to be illegal, invalid or unenforceable as a matter of law, such provision shall be fully severable, and the remaining provisions of this Agreement shall remain in full force and effect and continue to be binding and shall not be affected by such provision or by its severance herefrom. Furthermore, in lieu of such unlawful, invalid, or unenforceable provision, there shall be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such unlawful, invalid or unenforceable provision as may be possible.

NO WAIVER OF CONTRACTUAL RIGHT. No term or provision of this Agreement, or of any document executed pursuant hereto, shall be held to be waived, modified or deleted unless in writing and executed by the parties hereto. No delay or failure of the City to enforce any right or provision of this Agreement or in any document executed pursuant hereto shall operate as a waiver or relinquishment of the City's right to subsequently enforce and compel strict compliance with such provision or any other provision herein or in any document related hereto.

SUBJECT TO FUNDING. This Agreement is subject to availability and annual appropriation of funds by the Memphis City Council. In the event sufficient funds for this Agreement are not appropriated by the Memphis City Council for any of its fiscal period during the term hereof, then the City shall immediately terminate this Agreement upon written notice to the Contractor. In the event of such termination, the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work performed as of the termination date. Such termination by the City shall not be deemed a Breach of Contract by the City, and the Contractor shall have no right to any actual, general, specific, incidental, consequential, or any other damages whatsoever of any description or amount.

CONTRACTING WITH SMALL AND MINORITY FIRMS AND WOMEN'S BUSINESS ENTERPRISE. The Contractor shall take affirmative action to ensure that Small and Minority Businesses, which have been certified by the City, are utilized when possible as sources of supplies, equipment, construction and services, and shall, in addition, take similar appropriate affirmative action in support of Women's Business Enterprises.

PUBLIC RECORDS. Notwithstanding anything to the contrary contained herein or within any other document supplied to the City by the Contractor, the Contractor understands and acknowledges that the City is a governmental entity subject to the State of Tennessee Public Records Act.

ORGANIZATION STATUS AND AUTHORITY. The Contractor represents and warrants that it is a corporation, limited liability company, partnership, or other entity duly organized, validly existing and in good standing under the laws of the state of Tennessee; it has the power and authority to own its properties and assets and is duly qualified to carry on its business in every jurisdiction wherein such qualification is necessary.

The execution, delivery and performance of this Agreement by the Contractor has been duly authorized by all requisite action and will not violate any provision of law, any order of any court or other agency of government, the organizational documents of the Contractor, any provision of any indenture, agreement or other instrument to which the Contractor is a party, or by which the Contractor's respective properties or assets are bound, in conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets.

Each person executing this Agreement represents that: he/she is lawfully authorized to sign the Agreement on behalf of the party he/she represents and execution of the Agreement was duly and regularly authorized by the party's governing body.

WARRANTY. The Contractor warrants to the City that all goods/work shall be free from defects in design and faulty or improper workmanship and shall be in strict compliance with the terms of this Agreement. This warranty shall be effective for a period of not less than one year from the date of acceptance by the City of such goods and/or services as satisfactorily complete, and shall be in addition to all other warranties, expressed, implied or statutory.

RECORDS AND AUDITS. The Contractor shall make and keep as the same accrue, full and complete books, documents, accounting records and other evidence, that specifically relate to this Agreement, in accordance with generally accepted accounting principles. The Contractor shall retain such records, and shall make available to the City, upon reasonable request, during the term of this Agreement, and for a minimum period of three (3) full years after completion of the contract obligations or from the date of final payment under this Agreement, whichever is later. In the event any litigation, claim or audit is instituted prior to the expiration of the required three-year retention period, such records shall be retained until such litigation, claim or audit finding has been resolved. Copies of said records shall be furnished to the City upon request.

Upon reasonable notice, the Contractor shall permit the City, any other governmental entity, any agency participating in the funding of this Agreement, or any of their duly authorized representatives, to enter the Contractor's offices, during regular business hours, to interview employees and to inspect and/or copy said records and books of accounts together with any and all documents pertaining hereto that may be kept, maintained or possessed by the Contractor. Reviews may also be accomplished at meetings that are arranged at mutually agreeable times and places.

DISPUTE RESOLUTION. In the event of any dispute(s), controversy, or claim arising out of or relating to this Agreement or the breach thereof, the parties agree that they shall first use their best efforts in an attempt to settle the dispute through negotiations involving themselves or their representatives as they each deem appropriate.

Any dispute concerning a question of fact in connection with this Agreement between the Contractor and the City shall be referred to the Mayor, City Attorney, Purchasing Agent or a duly authorized representative, whose decision regarding same shall be final.

FORCE MAJEURE. The City shall not be deemed in default hereunder, nor shall the City be responsible for any delay, interruption, or cessation in the performance of its obligations under this Agreement where such failure of performance is the result of any force majeure event, including, but not limited to, acts of God, riots, wars, strikes, epidemics, acts, governmental authorities or acts of nature or other similar cause.

SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

NOTICES. All notices and other communications required or permitted to be given hereunder shall be written and hand delivered with signed receipt; delivered by facsimile; delivered by a nationally recognized overnight courier; or mailed via certified U.S. mail, postage prepaid and return receipt requested. All notices shall be deemed received and effectively given as follows: (i) if by hand delivery, on the date of delivery; (ii) if by fax, on the day the fax transmission is received at the receiving location and receipt is telephonically confirmed by the sender; (iii) if by delivery via U.S. mail, on the date of receipt appearing on a return receipt card; or (iv) if by overnight courier, on the date receipt is confirmed by such courier service. All notices must be addressed to the respective party at the following addresses or to such other person or address as either party may designate in writing and deliver as provided herein:

To the CITY:

City of Memphis _____

Memphis, TN _____

Attn: _____

Fax: _____

With copy, if requested,

to:

City Attorney

125 N. Main, Room 336
Memphis, TN 38103

To the CONTRACTOR:

Memphis, TN _____
Attn: _____
Fax: _____

CITY LIABILITY. The City shall have no liability except as specifically provided in this Agreement.

INDEMNIFICATION

The Contractor shall indemnify, defend, save and hold harmless the City, its elected and appointed officials, officers, agents and employees from and against any and all suits, claims, liabilities, damages (consequential or otherwise), or losses brought for bodily injury or damage to property (including attorneys' fees) that arise or are alleged to have arisen as a result of any conduct, whether actions or omissions; whether intentional, unintentional, or negligent; whether legal or illegal; or otherwise that occur in connection with or in breach of this Agreement or in the performance of the services required hereunder, by the Contractor, its subcontractors, agents or employees, excepting those losses or damages directly caused solely by the acts, errors, or omissions of the City or any of its officers, agents or employees. This indemnification shall survive the expiration or termination of this Agreement.

The Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Contractor shall in no way limit the Contractor's responsibility to indemnify, defend, save and hold harmless the City or its elected or appointed officials, officers, employees, agents, assigns, and instrumentalities as herein required.

The City reserves the right to appoint its own counsel regarding any matter defended hereunder. The Contractor acknowledges that the City has no obligation to provide legal counsel or defense to the Contractor, its employees or subcontractors in the event that a suit, claim or action of any character is brought by any person not a party to this agreement against the Contractor as a result of or relating to obligations under this agreement. The City shall have no obligation for the payment of any judgments or the settlement of any claims asserted against the Contractor or its subcontractors or employees as a result of or relating to the Contractor's obligations hereunder.

The Contractor shall immediately notify the City c/o City Attorney; 125 North Main, Suite 336; Memphis, TN 38103, of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from or relating to the Contractor's obligations under this Agreement and agrees to cooperate, assist and consult with the City in the defense or investigation thereof.

LIVING WAGE

This agreement is subject to Living Wage Ordinance #5185 as amended by Ordinance #5257 (effective July 1, 2008) that requires contractors who enter into a service contract with the City to pay employees who work under the service contract a living wage. The minimum hourly wage shall be at least \$10.27 per hour with health benefits for employees and their dependents or \$12.32 per hour without health benefits. The City will request all certified payrolls associated with this contract to be forwarded to the City Comptroller, c/o Dwayne A. Jones, Manager, Prevailing Wage Office, 125 N. Main Street, Room 1B-18, Memphis, TN 38103. Copies of the Ordinances are posted on the City of Memphis Website (www.memphistn.gov). Once on the City's homepage, click on the "Business" link, and then click on "Doing Business with the City" link. A link to the Ordinance will be on the top right side under the section "Links". Annual adjustments to the rates will be posted on the side for the next year in February.

GOVERNING LAW, JURISDICTION AND VENUE

The terms and conditions of this Agreement shall be construed in accordance with and governed by the laws of the State of Tennessee. All actions, whether sounding in contract or in tort, relating to the validity,

construction, interpretation and enforcement of this Agreement shall be instituted and litigated in the courts of the State of Tennessee, located in Shelby County, Tennessee, without regard to conflicts of laws principles. In accordance herewith, the parties to this Agreement submit to the jurisdiction of the courts of the State of Tennessee located in Shelby County, Tennessee.

INSURANCE

A. The Contractor shall not commence any work under this agreement until it has obtained and caused its subcontractors to procure and keep in force all insurance required hereunder. The Contractor shall require all subcontractors to carry insurance as outlined below, in case the subcontractor(s) are not protected by the policies carried by the Contractor. The Contractor shall furnish the City's Risk Manager a Certificate of Insurance and/or policies, upon request, attested by a duly authorized representative of the insurance carrier evidencing that the insurance required hereunder is in effect. All insurance companies must be acceptable to the City of Memphis and licensed in the State of Tennessee.

B. If any of the insurance requirements are non-renewed at the expiration dates of any policy, payment to the Contractor may be withheld until those requirements have been met, or at the option of the City, the City may pay the renewal premiums and withhold such payments from any monies due the Contractor.

C. The Contractor shall maintain, at its expense, at minimum, the following insurance coverage during the life of the Agreement:

1. WORKERS COMPENSATION Employer's Liability in accordance with the statutory requirements and limits of the State of Tennessee and shall require all subcontractors to do likewise.

\$100,000 Each Accident

\$500,000 Disease – Policy Limit

\$100,000 Disease – Each Employee

2. AUTOMOBILE LIABILITY covering owned, non-owned and hired vehicles with minimum limits of: \$1,000,000 Each Occurrence – Combined Single Limits

3. The Contractor shall be responsible for maintaining any and all PROPERTY INSURANCE on their own equipment and shall require all subcontractors to do likewise.

4. COMMERCIAL GENERAL LIABILITY: Comprehensive General Liability Insurance, including Premises and Operations, Contractual Liability, Independent Contractor's Liability, and Broad Form Property Damage Liability coverage:

General Aggregate \$1,000,000

Products - Completed Operations \$1,000,000

Personal & Advertising \$1,000,000

Each Occurrence \$1,000,000 (Bodily Injury & Property Damage)

Fire Damage any One Fire \$50,000

Medical Expense any one Person \$5,000

D. Each certificate or policy shall require and state in writing the following clauses:

1. "Thirty (30) days prior to cancellation or material change in the policy, notice thereof shall be given to the City of Memphis Risk Manager" by registered mail, return receipt requested to the following address:

City of Memphis

Attn: Risk Management

2714 Union Avenue Extended, Suite 200

Memphis, TN 38112

2. **"The City of Memphis, its officials, agents, employees and representatives shall be named as Additional Insured on all liability policies." The additional insured endorsements shall be attached to the Certificate of Insurance"**

IN WITNESS WHEREOF, the parties, by and through their duly authorized representatives, have executed this Agreement.

CITY OF MEMPHIS

By: _____
AC Wharton, Jr., Mayor

By: _____
Title: Name: _____

Approved as to Form:

City Attorney

Attest:

Deputy Comptroller